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Supreme Court of the United States

October Term, 1958

No. 429

JAMES S. PATTERSON, General Administrator for Mobile County, Alabama, etc., LEONARD LESTER SULLIVAN, MELVIN A. HAYS, et al.,

Petitioners,

v.

UNITED STATES OF AMERICA.

PETITION FOR REHEARING

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Supreme Court of the United States

October Term, 1958

No. 429

JAMES S. PATTERSON, General Administrator for Mobile County, Alabama, etc., LEONARD LESTER SULLIVAN, MELVIN A. HAYS, et al.,

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PETITION FOR REHEARING

The petition for rehearing is filed herein pursuant to Rule 33 of the Supreme Court Rules, and is presented in good faith and not for delay, and is restricted to the questions hereinafter more particularly set forth.

In view of the importance of the above entitled matter to all American seamen, which affects their economy, we trust that this Court will not consider it impertinent on our part to ask for reconsideration of this matter.

On May 18, 1959, this Honorable Court in a per curiam decision stated as follows:

> "No arguments are presented by petitioners which were not fully considered in *Johansen* and rejected."

It appears that we were obviously in error when we assumed that the Supreme Court of the United States would be satisfied with the analysis of the historical background of the United States' participation in merchant shipping, as set forth in the historical notes in petitioners' supplemental brief.

This having failed to serve its purpose, we respectfully ask this Honorable Court to consider the realistic facts which have taken place since the *Clarification Act of 1943*, 57 Stat. 45, 50 U. S. C. App. sec. 1291.

The fact is, and no one will contradict the accuracy of the statement that the United States Government is not operating merchant vessels, as the Government does not employ seamen directly.

Separate and distinct entities such as the Inlands Waterways Corporation, operating the Federal Barge Lines and the Panama Canal Company and other similar corporations, companies or entities, operating as independent units, are in fact conducting the business of merchant shipping. It is these companies that hire the seamen and not the United States Government.

This is clearly demonstrated by Exhibit "1", submitted herewith, which is a copy of the contract between Inlands Waterways Corporation and National Maritime Union of America, CIO, and by Exhibit "2" also submitted herewith, which is a copy of part of a letter which is self explanatory. That letter was written by the attorneys for the National Maritime Union of America to Jacob Rassner, under date of May 26, 1959.

We submit that the events following the enactment of the *Clarification Act, supra,* establish the fact that the United States Government is not employing seamen directly but that it has set up separate entities which operate ships and employ seamen, the same as any other private shipper. It is not the Government that does so.

Accordingly, we urge that these entities, though Government owned, are not entitled to immunity from suit.

We have pointed out in our previous briefs, particularly in the supplemental brief, that this Court has consistently held that where the United States Government

engages in commercial ventures, it is treated on the same basis as private business.

Exhibit "1" demonstrates that the independent entities which are Government owned comply with all obligations and assume all risks of private shipping companies in dealing with the seamen whom they hire.

The mere fact that these seamen are called, and we contend erroneously called "civilian employees" of the United States Government, factually our seamen are employed in commercial shipping and are entitled in justice and fairness to the same rights as any other seaman employed by any other private company, irrespective of who happens to be the stockholders; the President of the United States, a private citizen or a Government subdivision.

Respectfully submitted,

JACOB RASSNER,
Attorney for Petitioners.

APPENDIX

Exhibit 1

WHEREAS IN ORDER TO PROMOTE INDUSTRIAL PEACE AND HARMONY THE INLAND WATERWAYS CORPORATION, OPERATING THE FEDERAL BARGE LINES, HEREINAFTER REFERRED TO AND KNOWN AS THE "CORPORATION", AND THE NATIONAL MARITIME UNION OF AMERICA, C.I.O., ITS OR THEIR SUCCESSORS OR ASSIGNS, HEREINAFTER REFERRED TO AND KNOWN AS THE "UNION", DO ON THIS.....DAY OF..... 1947, AGREE AS FOLLOWS:

Subject to the laws of the United States of America (including section 305 of the Government Corporations Appropriations Act of 1948) and authorized directives of the Agencies of the United States in conformity with the laws of the United States, now or hereafter in effect; it is hereby agreed:

ARTICLE I

SECTION 1. (a) The Corporation agrees to recognize the Union as the accredited representative for the unlicensed boat employees on all vessels owned, operated, or chartered, covering working conditions when the crews of such boats are employees of and on the payroll of the Corporation.

(b) It is the intention of the Corporation to continue its present labor policies concerning hiring and union security until a union security pattern for private industry on the rivers has been established, and when this has been established or if there should be a new Federal personnel policy established, the Corporation will discuss any proposed changes in its policy with the Union.

SECTION 2. In making appointments under this Agreement preference must be given to veterans as required in the regulations for the administration and enforcement of the Veterans' Preference Act of 1944. Strict compliance with the provisions of this Act is the responsibility of the Corporation. The Corporation also must grant the rights of former employees to restoration after military service, pursuant to the requirements of the Selective Training and Service Act.

SECTION 3. The Corporation agrees to permit duly accredited representatives of the Union to board its vessels in any port, at any time, for the purpose of carrying on legitimate Union activities. The Union agrees to cooperate in the conduct of Union activities aboard the boats, in order that such activities will not interfere with normal operation of the vessel or proper supervision by the Master.

SECTION 4. The Corporation agrees not to discriminate against members of the Union for legitimate Union activities. The right of employees off watch to hold meetings aboard the boat at least once a week is specifically recognized.

SECTION 5. The Union shall take out insurance mutually satisfactory to the Union and the Corporation which will protect the Corporation and its agent, charterer, operator, and subsidiary or affiliated companies for any claim, loss, damage, or liability for loss of life or injury occurring to a representative of the Union while on the property or aboard any vessels owned, chartered, or leased by any of the aforesaid parties.

ARTICLE II

GENERAL CONDITIONS

SECTION 1. After the first twenty-four (24) hours in port, and where it is previously determined and posted on

the vessel's bulletin board that the vessel will remain in port an additional twenty-four (24) hour period or periods, the Corporation agrees to maintain repair work schedules on an eight (8) hour basis. (Not applicable to boats being commissioned or decommissioned.)

When safety of equipment or property is required, square watches will be maintained. Such emergencies will be written into the boat's log.

For the purpose of this rule, port time shall commence when the vessel is properly secured alongside the dock and the engine rung off; and port time shall cease when standby is rung.

SECTION 2. All members of the crew, including those permitted to be ashore, are to be aboard their boats not less than thirty (30) minutes before the posted time of departure. The time of departure shall be posted aboard the boat. An employee missing the boat due to departure prior to posted time shall not be penalized in any way and expenses incurred in joining the boat shall be paid by the Corporation.

SECTION 3. Meal hours while under way shall be as follows: Breakfast between 5:30 and 6:30 A. M., Dinner between 11:30 and 12:30; Supper between 5:30 and 6:30 P. M.; except when the men are detained by duty.

SECTION 4. The Corporation will endeavor to pay all employees covered by this Agreement twice each month, on or before the 10th and 25th of each month.

SECTION 5. In the event an employee has been discharged and believes he has been unjustly dealt with, such discharge may be handled as a grievance under the procedure outlined in Article V.

SECTION 6. A rest period of not less than twenty (20) minutes shall be allowed at 9:00 A. M., 3:00 P. M., 9:00

P. M., and 3:00 A. M., unless such rest periods interfere with operations. At such times coffee and lunch shall be made available to the crew. This privilege shall not be abused.

SECTION 7. Subject to the provisions of Article I, Section 2 of this Agreement when a vessel is laid up (except in stand by condition) the crew which lays up the vessel shall have the right to return to their jobs when the vessel comes back into operation.

SECTION 8. The Corporation agrees to furnish adequate rain clothes, (sou'-westers and oilskins) for all members of the deck department. Raincoats to the extent of two shall be made available to engine department members required to work outside the engine room during inclement weather. The Union agrees that members shall be held individually financially responsible for such rain clothes issued to them.

SECTION 9. In case of injury to a member of the crew, the Corporation will furnish transportation, subject to limitations imposed by Standardized Government Travel Regulations, to nearest physician or Marine Hospital, when necessary. The Corporation will follow the same procedure as in the above sentence in case of emergency illness.

SECTION 10. (a) The Corporation agrees that when it is determined that a vessel is to lay-up, immediately upon receipt of such advice, the Master shall post a notice on the bulletin board of the boat.

(b) The Corporation agrees to notify the Union whenever a vessel is to be refiitted, giving time, place, and manner of reshipment.

SECTION 11. Laundry equipment for the crew's laundry will be furnished by the Corporation and it is understood that the crews will clean and maintain such equipment.

SECTION 12. The Corporation reserves the right to establish manning scales but no changes will be made without prior consultation with the Union.

SECTION 13. All members of the galley crew shall divide their duties so as to perform their duties within a spread of twelve (12) working hours, insofar as possible.

SECTION 14. In no case shall men be required to work under dangerous or unsafe conditions. The Corporation will furnish life belts and the men will be required to wear them while on duty.

SECTION 15. The Corporation will pay transportation in accordance with Standardized Government Travel Regulations, as specifically set forth in Appendix "A" and only when such travel is authorized by an official designated to do so.

SECTION 16. (a) The following described work will not be required on Saturday afternoon, Sundays, legal holidays, or between the hours of 5:00 P. M. and 7:00 A. M., except as may be deviated from on specific occasions, by mutual agreement.

1. Cleaning paint
2. Painting
3. Chipping paint
4. Work not necessary to the safe and efficient navigation of the vessel, the tow, and/or safety, well-being or health of the personnel.

(b) The Corporation, in conformity with paragraph (a) of this Section, agrees to recognize the following holidays: New Year's Day; Washington's Birthday; Decoration Day; July 4th; Labor Day; Armistice Day; Thanksgiving Day; and Christmas Day.

SECTION 17. In the interest of sanitation, the Corporation and the Union agree that other than food handlers will be required to clean toilets and washrooms.

ARTICLE III

QUARTERS AND LIVING CONDITIONS

SECTION 1. The Corporation agrees to furnish wholesome and adequate food to its employees at all times, including fresh milk, vegetables and meat. The Chef Cook shall have the right to make suggestions.

The crew shall cooperate in preventing waste and spoilage.

SECTION 2. Messrooms shall be equipped with suitable chairs or benches.

SECTION 3. (a) A sufficient number of lockers shall be provided so that each employee shall have one locker with space to store personal effects wherever reasonably located space permits.

(b) When improvements in quarters are contemplated the crews shall have the right to make suggestions in writing to the Corporation, through the boat committee.

SECTION 4. The Corporation agrees to supply the unlicensed personnel with the following items:

1. White sheets and pillow cases shall be changed weekly.
2. Clean blankets.
3. Face and bath towels twice weekly.
4. Standard brand of soap.
5. Safety matches.

SECTION 5. The Corporation agrees to make all reasonable efforts to maintain sanitary and comfortable quarters. All reasonable efforts will be made by both management and crew to keep quarters assigned for the use of the unlicensed personnel free of vermin.

It is understood that the crew will keep their own quarters clean and in a sanitary condition.

SECTION 6. The Corporation agrees to continue to furnish, maintain and keep available adequate First Aid equipment on all its boats at all times.

SECTION 7. All employees covered by this Agreement shall furnish a certificate from the U. S. Public Health Service, once each six (6) months showing themselves to be free of venereal disease. Cooks and waiters are to be examined as soon as practicable after being hired, and thereafter shall furnish certificate every three (3) months.

ARTICLE IV

SECTION 1. Wages, time off, tour of duty, transportation expenses, board and maintenance when not provided, and related matters, will be specifically set forth in Appendix "A" to this Agreement.

ARTICLE V

GRIEVANCES

(a) Any dispute or grievance arising in connection with provisions of this Agreement shall be settled in accordance with Supplement No. 1 to Administrative Order No. 202-2, which is made a part of this Agreement, and the following procedure:

1. Employees are encouraged to settle their complaints and grievances by first discussing them with their immediate supervisors, who shall make an

earnest effort to bring about a fair and reasonable solution to their problems. If the employee feels that his complaint cannot be impartially and satisfactorily adjusted by his immediate supervisor, he should then present his case to the Master of the vessel who will make every effort to effect an equitable settlement.

2. If the employee is dissatisfied with the decision of the Master, he or his representative may immediately appeal, in writing, jointly to the Personnel Officer and the Marine Superintendent, who will hear the case within five (5) working days and submit their findings, with recommendations, to the President of the Corporation for decision. The employee shall be notified within forty-eight (48) hours, in writing, of the decision of the President.

3. In case this decision is unsatisfactory, the employee or his representative has the right to appeal from this decision within ten (10) days, to an arbitration committee whose decision shall be final and binding on both parties involved insofar as they conform to Administrative Order No. 202-2 as amended, or as specified elsewhere.

The Arbitration Committee shall consist of one (1) representative of the employees, one (1) representative of the Corporation, and a third acceptable to both the Corporation and the employees. If the Corporation and the employee or employees are unable to agree on a third party within five (5) days, they shall request the Federal Mediation and Conciliation Director to appoint a neutral arbitrator. Each party to this Agreement shall pay the expenses of their representative and the third member's expenses shall be divided equally between the Union and the Corporation.

(b) Each of the steps must be followed in the order given.

(c) *Veterans* Section 14 of the Veterans' Preference Act of 1944 (Public 359, 78th Congress) authorizes the Civil Service Commission to consider appeals from employees entitled to Veterans' Preference, concerning decisions of the Corporation relative to discharges, suspensions of more than thirty (30) days, furloughs without pay, and reductions in rank and compensation. The Commission's decision is binding on the Corporation.

ARTICLE VI

SECTION 1. This Agreement shall become effective July 1, 1947, and shall continue in force until June 30, 1948, and thereafter from year to year unless either party gives thirty (30) days written notice of a desire to alter it. At least thirty (30) days before the expiration of this Agreement, either party wishing to make a change herein shall be required to submit written notice thereof including a specification of the desired changes or additions. If either party submits such written notice and specifications, then the other party, if it desires, may, at least fifteen (15) days before the expiration of this Agreement, submit written notice and specifications of its counterproposal, if any, for revision or additions to the Agreement. If said thirty (30) days notice has been submitted by either party and agreement to the proposed changes or additions to the Agreement has not been reached before the expiration date, the Agreement shall be automatically extended for a thirty (30) day period and thereafter as may be mutually agreed to in writing between the Corporation and the Union.

FOR THE UNION:

/s/ JOSEPH CURRAN
President

National Maritime Union

.....

FOR THE CORPORATION:

/s/ A. C. INGERSOLL, JR.
President

INLAND WATERWAYS CORPORATION
Operating Federal Barge Lines

Exhibit 2

Pursuant to our conversation yesterday, I am taking this opportunity to apprise you of some of the surrounding circumstances involving the employment of National Maritime Union unlicensed personnel by the Panama Canal Company.

For many years, the Panama Canal Company has established as its policy the hiring of unlicensed personnel through the National Maritime Union Hiring Hall. The Company has not entered into any formal contract or agreement with the National Maritime Union, but it has been and still is its policy to apply to the unlicensed personnel of its respective vessels substantially the same wage scales and working conditions agreed to between the National Maritime Union and the representative organizations of the American steamship owners and operators.

The Panama Canal Company makes payments into the National Maritime Union Pension and Welfare Fund and the men are employed on a voyage basis, rather than as yearly employees. As distinguished from the unlicensed personnel, the deck and engine room officers on its vessels are Civil Service employees.

Furthermore, the Panama Canal Company has consistently paid its ill and injured employees maintenance under the General Maritime Law at the agreed NMU contract rate of $8.00 per day.

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Cooper, Ostrin & De Varco
By Herbert J. DeVarco

HJDeV:SZ

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for the purpose of delay.

JACOB RASSNER.

SUPREME COURT OF THE UNITED STATES

No. 429.—October Term, 1958.

James S. Patterson, General Administrator for Mobile County, Alabama, etc., Leonard Lester Sullivan, Melvin A. Hays, et al., Petitioners, *v.* United States of America.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May 18, 1959.]

Per Curiam.

Petitioners, Melvin A. Hays, Sterling E. Duncan, and Leonard L. Sullivan, were injured in the course of their employment with the United States while aboard vessels operated by the Government and engaged in merchant service. Petitioner Patterson is the administrator of the estate of Edgar A. Doody, Jr., who died as the result of injuries sustained by him while he was similarly employed. Each of the petitioners filed a libel *in personam* against the United States under the Suits in Admiralty Act, 41 Stat. 525 *et seq.*, 46 U. S. C. § 741 *et seq.* The Court of Appeals for the Second Circuit affirmed dismissal of the libels on the ground that petitioners' exclusive remedy was under the Federal Employees' Compensation Act, 39 Stat. 742 *et seq.*, 5 U. S. C. § 751 *et seq.*, 258 F. 2d 702. We granted certiorari, 358 U. S. 898, to resolve a conflict between the decision below and that of the Court of Appeals for the Eighth Circuit in *Inland Waterways Corp.* v. *Doyle*, 204 F. 2d 874.

In *Johansen* v. *United States*, 343 U. S. 427, 441, the Court held "that the Federal Employees Compensation Act is the exclusive remedy for civilian . . ." employees of the United States on government vessels engaged in

public service and that the United States was therefore not liable to such employees under the Public Vessels Act. 43 Stat. 1112 *et seq.*, 46 U. S. C. § 781 *et seq.* The considerations which led to that conclusion are equally applicable to cases where the government vessel is engaged in merchant service. The United States "has established by the Compensation Act a method of redress for its employees. There is no reason to have two systems of redress." 343 U. S., at 439.[1]

The major portion of petitioners' argument, however, is addressed to the proposition that *Johansen* was incorrectly decided and that we should avail ourselves of this opportunity to reconsider it. We decline to do so. No arguments are presented by petitioners which were not fully considered in *Johansen* and rejected. "[W]hen the questions are of statutory construction, not of constitutional import, Congress can rectify our mistake, if such it was, or change its policy at any time, and in these circumstances reversal is not readily to be made." *United States* v. *South Buffalo R. Co.*, 333 U. S. 771, 774–775. If civilian seamen employed by the Government are to be accorded rights different from or greater than those which they enjoy under the Compensation Act, it is for Congress to provide them.[2]

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[1] It is worthy of note that in *Johansen* the Court expressly disapproved the decision in *United States* v. *Marine*, 155 F. 2d 456, in which a civilian employee of the Government was awarded damages under the Suits in Admiralty Act for injuries sustained by him while aboard a vessel operated by the United States in the merchant service.

[2] The Clarification Act of 1943, 57 Stat. 45, 50 U. S. C. App. § 1291, indicates that Congress has chosen with care the remedies which it has made available to civilian seamen employed by the United States. That legislation provided that "officers and members of crews . . . employed on United States or foreign flag vessels as employees of the United States through the War Shipping Adminis-

Accordingly, the judgments of dismissal entered against petitioners Hayes, Duncan, Sullivan, and Patterson are affirmed. We also affirm dismissal of the libel filed by petitioner Vallebuona, who has conceded that he could prevail only if *Johansen* were overruled.

Affirmed.

MR. JUSTICE BLACK and MR. JUSTICE DOUGLAS dissent.

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tration, . . . because of the temporary wartime character of their employment by the War Shipping Administration, shall not be considered as officers or employees of the United States for the purposes of the United States Employees Compensation Act, as amended . . . ."